IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.490 of 1999

The Commissioner of Income Tax,
Chennai. ..Appellant

Vs

M/s.Srinath Productions,
No.154, Usman Road,
T.Nagar,
Chennai-600 017. ..Respondent

Appeal under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench in I.T.A. No.3315 (Mds) 90 dated 29.01.1999, for the assessment year 1987-88.

For Appellant : Mrs.Pushya Sitaraman

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

The present appeal is filed under Section 260-A of the Income Tax Act, 1961 by the Revenue, in I.T.A. No.3315 (Mds) 90 dated 29.01.1999, passed by the Income Tax Appellate Tribunal, Madras "B" Bench raising the following substantial question of law.

> "Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the payments made to the partners a sum of Rs.5,20,000/- by the assessee firm were not disallowed u/s 40 (b)of the Income Tax Act?"

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The facts leading to the above question of law are as under:

i) The assessee is a firm engaged in the production of feature films. The relevant assessment year is 1987-88. The assessee firm had come into existence during the year and it is the first year of the assessment in this case. The assessee filed Return of income, declaring a total income of Rs.12,20,975/- for the assessment year under consideration. During the year, the assessee firm had paid Rs.5,00,000/- to Shri T.Rama Rao on account of Director's remuneration and Rs.20,000/- to Shri T.Banerjee on account of Technician's remuneration, totalling Rs.5,20,000/- towards remuneration. Shri T.Rama Rao and Shri T.Banerjee were partners in the assessee firm and the said amount of Rs.5,20,000/- was claimed as deduction. The Assessing Officer, was however of the view that the above payment was hit by the provisions of Section 40(b) of the Income Tax Act, since the persons to whom these payments were made, happened to be the partners of the assessee's firm. The Assessing Officer, therefore disallowed the deduction on this account and completed the assessment.

ii) Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) allowed the appeal filed by the assessee and directed the Assessing Officer to delete the tax made on this account. Aggrieved by the order of the C.I.T. (A), the Revenue filed appeal to the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal relied on the Andhra Pradesh High Court Judgment reported in 169 ITR 678 in the case of C.I.T. Vs. Chitra Kalpana and held that the assessee firm is entitled to deduction towards payment of remuneration.

3. The learned counsel for the Revenue submitted that the Tribunal was not right in deleting the disallowance made by the Assessing Officer by holding that the payment were made not on account of partner but for the specific services and hence, it was allowable. No representation on behalf of the respondent assessee in spite of the notice served.

4. The issue in this case is covered by this Court Judgment in the case of Commissioner of Income Tax Vs. Packwell (Karnataka) Industries, reported in 267 ITR 452, which held as follows:

> "On principle as well, it is not possible to accept the argument that the statutory prohibition is to be ignored or diluted by regarding a partner to whom remuneration is paid as a person who besides being a partner is

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

something more or something different when he deals with the firm. A partner in a firm is very much a partner and it is that status which defines his rights and also imposes on him the obligation to render all the services that he is capable of for the advancement of the objects of the firm. Such a person cannot seek to avoid the effect of the prohibition made in the statue by describing himself as an expert. Any expertise that he may possess is required to be made available to the firm as a partner and even if remuneration therefor is permissible in terms of the partnership deed, nevertheless, having regard to the statutory provision which prevailed until the law was amended in 1992, payment so made cannot be regarded as being items of expenditure so far as the firm is concerned. The question is answered in favour of the Revenue and against the assessee."

5. In view of the foregoing conclusions, we answer the above question in favour of the Revenue, against the assessee. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

km

1.The Asst. Registrar,
Income Tax Appellate Tribunal
Bench "B" Rajaji Bhavan, III Floor,
Besant Nagar, Chennai -90.

2.The Secretary Central Board of Direct Taxes,
New Delhi.

3.The Commissioner of Income Tax (Appeals)
Chennai -34.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4.The Deputy Commissioner of Income Tax
Special Range IV, Madras.

5.The Commissioner of Income Tax,
Tamil Nadu IV, 121 Uttamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

+1cc to Mr.Pushya Sitaraman, Advocate Sr 5110

TEJ (CO)
km/16.2.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/